

Senate Bill 171

By: Senators Adelman of the 42nd, Shafer of the 48th, Johnson of the 1st, Rogers of the 21st,
Reed of the 35th and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public Retirement Systems Investment Authority Law," so as to provide for legislative findings; to provide for an exception; to provide for definitions; to provide for the initial and continuing identification of companies that do business with Sudan; to provide for the divestment of ownership interests held by public retirement and pension funds in such companies; to prohibit investments in such companies; to provide for exceptions; to provide for termination of such prohibitions and divestments; to provide for certain notices; to provide for certain reports; to provide for enforcement; to provide for related matters; to provide conditions for an effective date and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Due to the exigent circumstances regarding the ongoing, daily suffering of the people in Sudan and the atrocities being committed there, the General Assembly finds it necessary to act quickly in addressing the issues contained in this legislation. Therefore, this bill shall not be subject to the provisions of subsection (d) of Code Section 47-20-34.

SECTION 2.

The General Assembly finds that:

(1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide";

(2) On September 9, 2004, Secretary of State Colin L. Powell told the United States Senate Foreign Relations Committee that "genocide has occurred and may still be occurring in Darfur" and "the Government of Sudan and the Janjaweed bear responsibility";

(3) On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's finding and stated, "[A]t this hour, the

world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide";

(4) On December 7, 2004, the United States Congress noted that the genocidal policy in Darfur has led to reports of "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves";

(5) Also, on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter";

(6) On September 25, 2006, Congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan";

(7) On September 26, 2006, the United States House of Representatives stated that "an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad";

(8) The Darfur crisis represents the first time the United States government has labeled ongoing atrocities as genocide;

(9) The federal government has imposed sanctions against the government of Sudan since 1997 which are monitored through the United States Treasury Department's Office of Foreign Assets Control (OFAC);

(10) According to a former chair of the United States Securities and Exchange Commission, "the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company";

(11) Since 1993, the United States Secretary of State has determined that Sudan is a country whose government has repeatedly provided support for acts of international terrorism, and, as a result, the United States has restricted assistance, defense exports, defense sales, financial transactions, and various other transactions with the government of Sudan;

(12) A 2006 report by the United States House of Representatives states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment";

(13) In response to the financial risk posed by investments in companies doing business with a state that sponsors terrorists, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies;

(14) The current Sudan divestment movement encompasses nearly 100 universities, municipalities, states, and private pension plans;

(15) Companies facing such widespread divestment present further material risk to remaining investors;

(16) It is a fundamental responsibility of the State of Georgia to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors, and, with respect to investment resources in its control and to the extent reasonable, with due consideration for return on investment on behalf of the state and its investment beneficiaries, not to participate in an ownership or capital providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan;

(17) It is the judgment of the General Assembly that the provisions of this Act should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States, as determined by the federal government; and

(18) It is the judgment of the General Assembly that mandatory divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously, but a congressional and presidential declaration of genocide satisfies this high threshold.

SECTION 3.

Article 7 of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public Retirement Systems Investment Authority Law," is amended by adding a new Code section to read as follows:

"47-20-83.2.

(a) As used in this Code section, the term:

(1) 'Active business operations' means all business operations that are not inactive business operations.

(2) 'Business operations' means engaging in commerce in any form in Sudan, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) 'Company' means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(4) 'Complicit' means taking actions during any preceding 20 month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(5) 'Direct holdings' in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(6) 'Government of Sudan' means the government in Khartoum, Sudan, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan.

(7) 'Inactive business operations' means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(8) 'Indirect holdings' in a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this Code section.

(9) 'Marginalized populations of Sudan' include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(10) 'Military equipment' means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(11) 'Mineral-extraction activities' include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including providing supplies or services in support of such activities.

(12) 'Oil related activities' include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil field infrastructure; and facilitating such activities, including providing supplies or services in support of such activities, except that the mere retail sale of gasoline and related consumer products shall not be considered an oil related activity.

(13) 'Power-production activities' means any business operations that involve a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including providing supplies or services in support of such activities.

(14) 'Public fund' means the investment fund of any public retirement system or pension system as defined in Code Section 47-20-81.

(15) 'Scrutinized active business operations' means active business operations that have resulted in a company becoming a scrutinized company.

(16) 'Scrutinized company' means any company that meets any of the following criteria:

(A) The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan and:

(i) More than 10 percent of the company's revenues or assets linked to Sudan involve oil related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil related or mineral-extracting products or services to the regional government of

southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

(ii) More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action;

(B) The company is complicit in the Darfur genocide; or

(C) The company supplies military equipment within Sudan, unless it clearly shows that such military equipment cannot be used to facilitate offensive military actions in Sudan, or the company implements rigorous and verifiable safeguards to prevent use of that military equipment by forces actively participating in armed conflict. Examples of safeguards include postsale tracking of such military equipment by the company, certification from a reputable and objective third party that such military equipment is not being used by a party participating in armed conflict in Sudan, or sale of such military equipment is solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding anything in this Code section to the contrary, a social-development company which is not complicit in the Darfur genocide shall not be considered a scrutinized company.

(17) 'Social-development company' means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment; agricultural supplies or infrastructure; educational opportunities; journalism related activities; information or information materials; spiritual related activities; services of a purely clerical or reporting nature; food, clothing, or general consumer goods that are unrelated to oil related activities; mineral-extraction activities; or power-production activities.

(18) 'Substantial action' means adopting, publicizing, and implementing a formal plan to cease scrutinized active business operations within one year and to refrain from any such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship with the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(b) On or before October 1, 2009, each public fund shall make its best efforts to identify all scrutinized companies in which that public fund has direct holdings or indirect holdings or could possibly have such holdings in the future. Such efforts include:

(1) Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracted by the public fund that invest in companies having business operations in Sudan; and

(3) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(c) By the first meeting of each board responsible for the management of a public fund after October 1, 2009, the board shall assemble all scrutinized companies into a Scrutinized Companies List.

(d) The board of each public fund shall update quarterly its Scrutinized Companies List based on evolving information from, among other sources, those listed in subsection (b) of this Code section.

(e) Each public fund shall adhere to the following procedure for companies on its Scrutinized Companies List:

(1) Each public fund shall immediately determine the companies on its Scrutinized Companies List in which such public fund owns direct holdings or indirect holdings;

(2) For each company on such list that has only inactive business operations, the public fund shall send a written notice informing such company of this Code section and encouraging it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized active business operations; the public fund shall continue such correspondence semiannually;

(3) For each company newly identified under this Code section that has active business operations, the public fund shall send a written notice informing such company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice shall inform such company of the opportunity to clarify its Sudan related activities and encourage such company, within 90 days, to cease its scrutinized active business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund; and

(4) If, within 90 days after a public fund's first engagement with a company pursuant to this subsection, that company ceases scrutinized active business operations, such company shall be removed from the Scrutinized Companies List, and the provisions of this Code section shall cease to apply to that company unless that company resumes

scrutinized active business operations. If, within 90 days after such public fund's first engagement, such company converts its scrutinized active business operations to inactive business operations, such company shall be subject to all provisions relating to inactive business operations.

(f)(1) If, after 90 days following a public fund's first engagement with a company pursuant to subsection (e) of this Code section, such company continues to have scrutinized active business operations, and only while such company continues to have scrutinized active business operations, such public fund shall sell, redeem, divest, or withdraw all publicly traded securities of such company, except as provided in subsection (h) of this Code section, according to the following schedule:

(A) At least 50 percent of such assets shall be removed from the public fund's assets under management by nine months after the company's most recent appearance on the Scrutinized Companies List; and

(B) One hundred percent of such assets shall be removed from the public fund's assets under management within 15 months after the company's most recent appearance on the Scrutinized Companies List.

(2) If a company that ceased scrutinized active business operations following engagement pursuant to subsection (e) of this Code section resumes such active business operations, this subsection shall immediately apply, and the public fund shall send a written notice to such company. The company shall also be immediately reintroduced onto the Scrutinized Companies List.

(g) A public fund shall not acquire securities of companies on the Scrutinized Companies List that have active business operations, except as provided in subsection (h) of this Code section.

(h) A company that the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall not be subject to divestment or the investment prohibition pursuant to subsections (f) and (g) of this Code section.

(i) Subsections (f) and (g) of this Code section shall not apply to indirect holdings in actively managed investment funds. However, each public fund shall submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, such public fund shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this subsection, a private equity fund shall be deemed to be an actively managed investment fund.

(j) Notwithstanding any other provision of this Code section, each public fund, when discharging its responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering and the offering is deemed by such public fund to be consistent with prudent investor standards, such public fund shall consider including such investment offering in the plan.

(k) Each public fund shall file a report with the President of the Senate and the Speaker of the House of Representatives that includes its Scrutinized Companies List within 30 days after such list is created. This report shall be made available to the public. At each meeting of the board responsible for the management of a public fund thereafter, the board shall file a report, which shall be made available to the public and to the President of the Senate and the Speaker of the House of Representatives, and shall send a copy of that report to the United States Presidential Special Envoy to Sudan or an appropriate designee or successor, which includes:

(1) A summary of correspondence with companies engaged by the public fund under this Code section;

(2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code section;

(3) All prohibited investments under this Code section; and

(4) Any progress made under subsection (i) of this Code section.

(l) If any of the following occur, each public fund shall no longer scrutinize companies according to this Code section and shall no longer assemble the Scrutinized Companies List, shall cease engagement and divestment of such companies, and may reinvest in such companies:

(1) The Congress or President of the United States declares that the Darfur genocide has been halted for at least 12 months;

(2) The United States revokes all sanctions imposed against the government of Sudan;

(3) The Congress or President of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

(4) The Congress or President of the United States through legislation or executive order declares that mandatory divestment of the type provided for in this Code section interferes with the conduct of United States foreign policy.

(m) With respect to actions taken in compliance with this Code section, including, but not limited to, all good faith determinations regarding companies as required by this Code section, a public fund shall be exempt from any conflicting statutory or common law obligations, including, but not limited to, any such obligations with respect to choice of asset managers, investment funds, or investments of such public fund's securities portfolios.

(n) Notwithstanding any other provision of this Code section to the contrary, a public fund may cease divesting from certain scrutinized companies or reinvest in certain scrutinized companies from which it divested pursuant to this Code section if clear and convincing evidence shows that the value of all assets under management by such public fund becomes equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets under management by such public fund, assuming no divestment for any company had occurred under this Code section. Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this subsection shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in this subsection. For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this Code section, each public fund shall provide a written report to the President of the Senate and the Speaker of the House of Representatives in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies having scrutinized active business operations. This subsection shall not apply to reinvestment in companies on the grounds that they have ceased to have scrutinized active business operations.

(o) The Attorney General shall enforce the provisions of this Code section and, either personally or through any lawful designee, may bring such actions in court as are necessary to do so."

SECTION 4.

This Act shall become effective on July 1, 2009, only if it is determined to have been concurrently funded as provided in Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public Retirement Systems Standards Law"; otherwise, this Act shall not become effective and shall be automatically repealed in its entirety on July 1, 2009, as required by subsection (a) of Code Section 47-20-50.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.